



California Regional Water Quality Control Board

Central Valley Region



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10 November 2005

SUMMARY OF COMMENT LETTERS REGARDING RENEWAL OF IRRIGATED LANDS CONDITIONAL WAIVERS

This summary of comment letters regarding the renewal of the Irrigated Lands Conditional Waivers is an attachment to the 10 November 2005 letter *Responses To Comments Regarding Renewal Of Irrigated Lands Conditional Waivers*. Letters summarized herein were received at the Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board) offices as of 7 November.

Form Letters

Central Valley Water Board staff received 115 form letters by email representing farm bureaus, ranchers, farmers, and other stakeholders. Each of the form letters was identical, with one exception. One letter only contained a portion of the form letter. The comments in the form letter recommended renewing or extending the 2003 Conditional Waivers and removing the requirement for individual Farm Water Quality Plans. The form letters suggest identifying water quality impairments, prioritizing where progress is necessary, and working with Coalition Groups to implement solutions before requiring the changes. The form letter also includes an objection to not including parcels based on whether the "production" is sold.

These comments are addressed in responses 1, 3, and 7.

California Citrus Mutual (CCM) – 25 October 2005

CCM supports Coalition Groups and wants to be equal partners in the process of achieving workable solutions. The process is believed to be broken, citing that the request for Farm Water Quality Plans is a significant change from the 2003 Conditional Waivers, which staff said would have minimal changes, and does not include scientific justification. The proposal of the Farm Water Quality Plan did not include any outreach with stakeholders. The requirement for direct enrollment does not determine surface water quality and creates an uncooperative spirit.

The Tentative Renewal Documents create obstacles to achieving the Board's goals. The time frame for providing comments on the Tentative Renewal Documents is minimal. CCM recommends extending the current waiver in its current format until additional data is collected and identified concerns are resolved.

These comments are addressed in responses 1, 2, 3, and 7.

Sutter County Agricultural Commissioner, Mark Quisenberry – 27 October 2005

Mr. Quisenberry requests a 60-day extension to the 30-day comment period so the Tentative Renewal Documents may be reviewed by peer groups, the public, and affected industries. Although staff wants to

deliver a final document before the 2003 Conditional Waivers expire, the Board can extend the 2003 Conditional Waivers until the contentious issues are resolved.

These comments are addressed in response 1.

California Farm Bureau Federation (Farm Bureau) – 28 October 2005

The Farm Bureau requests an extension of the 30-day public comment period based on concerns about the number of substantive changes. These changes include, but are not limited to, the expanded monitoring program, receiving water limitations in tentative Table 1 of Attachment A, the Farm Water Quality Plan requirement, and direct enrollment. The Farm Bureau letter also expresses concerns regarding the timing of the November Central Valley Water Board meeting not allowing sufficient time to review any late revisions and requests the hearing date be moved back at least 90 days or set up a special hearing. The Farm Bureau notes that substantial progress has been made, and staff should allow progress to be made by avoiding substantial modifications and hasty decisions.

These comments are addressed in responses 1, 2, 3, 4, 5, and 7.

Sacramento Valley Water Quality Coalition (Sac Valley Coalition) – 28 October 2005

The Sac Valley Coalition letter states that the proposed changes are unnecessary, baseless, and not recommended by the Technical Issues Committee (TIC). The letter refers to the 23 June 2005 joint State and Central Valley Water Board meeting, stating that there was no discussion of major changes, and no direction from either Board to make any changes to the Program. The Boards understood that some minor revisions were being considered, and the Central Valley Water Board staff was preparing an extension proposal. To support not changing the 2003 Conditional Waivers, the Sac Valley Coalition states that the current Program has a strong legal foundation, as supported by the 9 May 2005 Sacramento Superior Court ruling, and the generally very positive monitoring results do not warrant a program overhaul. Regarding direct enrollment, the Sac Valley Coalition states that the Legislature does not support individual enrollment and that the Coalition Groups are devising strategies to provide participation information. Lastly, the Sac Valley Coalition recommends that the Central Valley Water Board renew the 2003 Conditional Waivers for five years and work within the existing Program to manage water quality issues.

These comments are addressed in responses 1, 2, and 7.

Southern San Joaquin Valley Water Quality Coalition (So. San Joaquin Coalition) – 28 October 2005

So. San Joaquin Coalition expresses concerns about the abandonment of appropriate administrative and review processes and the content of the amendments, which are wide-sweeping and a change of direction. Many Coalition Groups have indicated they could not possibly continue to exist due to the effects of these amendments, so the Central Valley Water Board should reject the renewal documents in total. Sufficient time was not provided to respond to the renewal documents. The letter discusses the process of adopting the waiver, referring to how agriculture worked with the Board on terms that were carefully negotiated, tradeoffs made, compromises achieved, and assurances given. The cooperative arrangement was a struggle, and Coalition Groups were frustrated when the Board did not respond to suggestions and believe the Board wanted the Coalition Groups and waiver to fail. Despite this, the cooperative relationship overcame and the waiver was a colossal success in its first two years.

Monitoring shows that the alleged problems were highly overstated and that agriculturally-related water quality problems are limited in number, duration, and significance. Exceedances were taken seriously, and actions were directed to address those problems which had been identified. Technical issues were discussed at the Technical Issues Committee, Public Advisory Committee, and general meetings.

In August, the letter states, staff indicated that some other issues may be proffered during the waiver extension process and Coalition Groups asked for details and expressed concern that the changes should be brought to the proper forum for discussion. The letter states that State Water Board representative Ms. Beth Jines expressed concern over arising issues that had not been shared with stakeholders and instructed that those issues be identified and discussed prior to the September Board meeting. It is apparent that the Board's designed tactic of not bringing up the controversial issues and having them vetted in appropriate forums was to keep the amendments secret and then jam them into the process all the while indicate that the changes were not going to be substantive.

Only a few days prior to the October Board meeting, Coalition Groups were served a 100-page document that entirely terminates the 2003 Conditional Waivers and proposes to create a new waiver that is not consistent with agreements made or how the waiver was sold to landowners and is an entire re-direction of how growers participate with Coalition Groups. An integral part of the 2003 Conditional Waivers was the phased monitoring which has been entirely changed. The Tentative Renewal Documents change the responsibilities of the Coalition Groups and reduces their ability to implement the waivers. There are more than 12 fundamental changes to the 2003 Conditional Waivers that were entirely unanticipated and have never been advanced or discussed, which are unfounded and unnecessary. Many of the changes, of which the substance is totally unsupportable, cannot be effectively implemented and will result in the failure of the waiver system. So, San Joaquin Coalition recommends that the amendments be rejected and only those amendments that have had a full discussion be advanced in its stead.

The letter includes a table listing the fundamental changes which are: 1) use of the term "rescinded" when the waiver can be renewed; 2) the definition of discharger omits the "participant" language which was extensively discussed and agreed upon; 3) more appropriate language is needed to address the indication that the Coalition Groups will guarantee that all water quality objectives will be achieved; 4) the language that the waiver will be interim until a long-term program is developed is needless and unartful to express that it is necessarily "interim" to something else; 5) Coalition Groups agree that individual WDRs are not a practical approach; 6) the request for direct enrollment disregards the State Water Board's Order, is premature, and may not be able to be submitted electronically; 7) amendments to the definition of discharger do not clarify who is a "discharger;" 8) the Farm Water Quality Plan is meaningless, ineffective, needlessly impacting, and will be ineffectively complied with; 9) it is needless for the Board to require the Coalition Groups to calculate load because it will not support the total quantity in a season but only the load on particular days; 10) although the Coalition Groups have accepted the twice a year monitoring report requirements, staff's rationale that the reporting frequency will allow for more timely feedback has not happened; 11) Coalition Groups receive data from the laboratories in hard copy, which would be improper for Coalition Groups to convert to electronic format as staff is requesting; 12) the receiving water limitations listed in tentative Table 1 of Attachment A is an attempt to promulgate numbers beyond those adopted in the Basin Plan which is a breach of the Basin Plan adoption process; 13) the requirement for a Management Plan based on the request of the Executive Officer was never indicated nor that the plan would become a public document; 14) new references to

Water Code Sections 13267 and 13268 raise the question of whether the enforcement will be directed at the Coalition Groups; and 15) the provision for no new discharges or increase in discharge dictates no new crop could be raised.

The letter concludes by raising concerns about membership list submittal and staff's incorrect justification for changes based on Water Code 13269 and the State's Nonpoint Source Plan.

These comments are addressed in responses 1, 2, 3, 4, 5, and 7. Staff is not proposing to include the MRPs in the renewal package. Comments on the MRP, identified as Points 15 through 17 in the letter, will be addressed during the MRP revision process.

Placer County Department of Agriculture Weights and Measures – 29 October 2005

The letter characterizes the renewal documents as proposing radical changes and lists some of the changes stating them as a disjointed and dysfunctional rollout of a new regulatory program.

Ms. Christine Turner, author of the letter, states she has provided feedback on the Program that has been ignored. Most farmers understand the need for downstream sampling with sampling upstream if the results indicate the need, but do not understand the need to move up the watershed without a compelling reason. Ms. Turner requests that her comments be considered so that the Program in 2006 is science-based and developed in cooperation with the Department of Pesticide Regulation.

These comments are addressed in responses 1, 5, and 7.

Monsanto – 1 November 2005

Monsanto provides links for information on Maximum Contaminant Levels and glyphosate data that is more accurate than the information provided in tentative Table 1 of Attachment A.

Response: Thank you for providing staff with these links.

California Grape and Tree Fruit League (League) – 2 November 2005

The League has concerns about 1) the short time frame to respond to the significant changes, 2) lack of communication with stakeholders before the documents were released, 3) direct membership enrollment requirement, 4) farm management plan requirement, 5) monitoring activities increase, 6) collapsing of phases into a long term monitoring strategy, and 7) increased administrative time and costs to comply with the new provisions. Growers understand the need for monitoring activities but question the fairness of the system that "essentially requires them to bear the full impact of the cost of such programs." A way must be found that would equitably distribute the costs of such programs as the irrigated lands waiver. The League recommends extending the 2003 Conditional Waivers for five years.

These comments are addressed in responses 1, 2, 3, 5, and 7.

Modesto Irrigation District (MID) – 2 November 2005 (comments received after deadline for submittal)

The MID letter states that although staff said the changes presented in the Tentative Renewal Documents were merely for clarification and consistency, the proposed changes have resulted in a new and more extensive list of constituents for analysis, more frequent schedule for monitoring, bi-annual written and

electronic reporting, and receiving water chemical constituent limits. MID recommends extending the 2003 Conditional Waivers.

MID opposes the receiving water limitation table because 1) a majority of the limits listed are not in the Basin Plan; 2) the definition of exceedance conflicts with the practical quantitation limit (PQL) requirement; 3) 21 of the PQLs listed in Table 1 of the MRP are higher than the receiving water limitation; 4) many of the limits are based on 30-day averages, which once a month sampling could not be considered; 5) staff should consult with DPR for information on health effects, testing methodology, and PQLs; 6) limits listed should be consistent with limits listed in other Water Board programs; 7) many of the PQLs cannot be met and MID does not believe the issues have been discussed adequately; and 8) the “statistically different” criteria for toxicity sampling can be problematic because 10% can be “significant” but differences less than 50% are generally considered to be meaningless in toxicity testing.

The letter states that the requirement for dischargers to improve and protect water quality in Attachment B requires improvement above background even if monitoring shows no degradation has occurred. This requirement is impossible to meet. Attachment B also includes a finding that dischargers shall not add new wastes, which limits the discharger’s ability to make management changes to farming practices.

MID says the Central Valley Water Board assumes that the Water Code gives water districts responsibility over their water use management practices and that all water districts accept agricultural return water flows and stormwater into their facilities. Staff has given conflicting messages about the responsibility for discharges. During the Basin Plan amendment for chlorpyrifos and diazinon, staff said only users of those chemicals would be responsible, yet for the Irrigated Lands Program, the water districts are responsible for all discharges into their facilities. It can’t be both ways. Furthermore, staff states that the water districts cannot assume that all growers are members of a Coalition Group, but it is not the responsibility of the water districts to get growers to join a Coalition Group. Staff must work with the Coalition Groups to resolve this problem.

The letter also includes 10 comments on the MRP. MID recommends that Table 1 be used to inform dischargers when further sampling and evaluation is needed, not to determine exceedances of the water quality objectives.

Staff is not proposing to include the MRPs in the renewal package to allow more time for technical discussions. The other comments provided in the letter are addressed in responses 1, 4, 5, 6, and 7.

California Cotton Ginners and Growers Association (Cotton Association) – 3 November 2005

The Cotton Association provided the following eight comments: 1) the current process is broken and impedes the Board’s goal of identifying water quality problems; 2) there are significant changes proposed based on scant data, and staff have not allowed enough time for the 2003 Conditional Waivers to work; 3) water quality issues must be determined first and then work with the Board to determine how to fix the identified problems; 4) another five years of data are needed to identify problem areas and cultural practices causing the problems; 5) agriculture knows how to create partnerships to solve problems; 6) trade associations, such as Cotton Association, want to be part of the solution, but there needs to be balance in the process; 7) growers will be harmed and the Board’s objectives will not be achieved if the Program progresses in the current direction; and 8) because the Board is in a state of transition, Cotton Association recommends extending the 2003 Conditional Waivers for five years so

data can be gathered and analyzed to make decisions and so partnerships can be formed between agriculture and the Board to address water quality problems.

These comments are addressed in responses 1 and 7.

Pacific EcoRisk – 3 November 2005

The Pacific EcoRisk letter was included as an attachment to the San Joaquin Valley Drainage Authority email and states that they were contracted to review tentative Table 1 of Attachment A. Pacific EcoRisk evaluated how the numbers were selected and whether they were listed correctly, and reviewed the supporting literature. The letter points out that if the PQL is higher than the receiving water limitation, that the PQL is used, but this creates a problem with different laboratories having different PQLs. Pacific EcoRisk points out typographical errors, such as ug/l provided for the California MCL for total dissolved solids and glyphosate instead of mg/l, and the inaccuracy with the use of the term “LC50 dose.” The letter corrects the numbers provided for methomyl and diclorvos.

The letter states that there are pervasive problems with the use of limits that are not derived from promulgated databases. All of Pacific EcoRisk’s comments regarding this concern are related to the use of the Pesticide Action Network references for the LC50 values. Pacific EcoRisk states concerns about listing objectives based on a study with LC50 orders of magnitude lower than comparable studies. The letter states that several of the studies used to set the proposed water quality objectives had an inappropriate scientific design for toxicity testing, or an insufficient narrative description of the study design, with six examples given.

These comments are addressed in response 4.

Westlands Storm Water Discharge Coalition (Westlands) – 3 November 2005

Westlands questions whether the Board fully understands the implications of the proposed changes to the Program, which staff are advocating. The Program essentially regulates any and all lands that are not subject to a General Order or NPDES permit. Westlands questions the intent of the Program. Staff uses terms like “discharger,” “participant,” “grower,” “landowner,” and “operator” synonymously, but these terms have different meanings. The Program is vague on who exactly falls under the waiver. Westlands encompasses nearly 605,000 acres, but only 96,000 could be classified as “discharger” with the potential to discharge. Therefore, under the new program who would the Board consider to be a discharger? Who should pay fees? The Board and staff have evaded these questions. “How can the Board in good conscience consider amending the existing program and at the same defer action and key decisions on outstanding issues? Further, why hasn’t every report and workshop to the Board and public included a summary of water quality successes/failures that have occurred since the inception of this program? The staff report to your Board routinely sounds like the agricultural community is not responding to the program which is far from the truth.”

Neither the Technical Issues Committee nor the Board recommended the proposed dramatic changes. Westlands has 80% enrollment because the Coalition Group assumes responsibilities, which otherwise would be required by each landowner. The staff proposes direct enrollment from the members, which leads to the question of what is the role or purpose of a Coalition Group? Is the Coalition Group an entity to conduct monitoring and pay fees? The proposed changes eliminate any justification for the existence of Coalition Groups except for the sole purpose of conducting monitoring. Westlands quotes

the penalty of perjury in the MRPs saying that if staff assumes a direct relationship with the “dischargers,” then staff should assume the legal implications of the penalty of perjury statement.

Westlands believes the timing of the renewal is inappropriate after one year of data that “have shown very positive results” and that Coalition Groups are advancing solid and scientifically defensible monitoring programs to more thoroughly understand water quality issues. Westlands recommends extending the existing waiver for five years and that the Board work with the Coalition Groups within the existing framework to manage water quality issues from irrigated lands. If the Board chooses to adopt the new program, Westlands will report to the Westlands Water District Board to determine if continued participation is warranted. Westlands further recommends that Board members, staff, Coalition Groups, and the environmental community meet in an open workshop and dialogue on the existing and new Program.

These comments are addressed in responses 1, 2, 5, and 7.

Archer Norris – 4 November 2005

Archer Norris states that the comments provided are on behalf of the Turlock Irrigation District (TID). TID has concerns regarding the application of the waivers on irrigation districts and believes that the current proposal oversteps the Board’s authority and imposes onerous and unjustified burdens on individual irrigation districts. Irrigation districts take responsibility for their own activities and should not have to be responsible for the discharges of others. An analogy of having municipalities be liable for the conduct of drivers on the roads they maintain is given as an example of why irrigation districts should not be responsible for the discharges of others. The definition of discharger should not be stretched to those that merely convey water bearing the discharges of others. TID recommends that the Board not adopt the proposed changes and instead direct staff to develop a program that places responsibility on irrigation districts only for their own activities that may discharge waste to waters of the State. TID will make its facilities available to Coalition Groups as necessary to implement their watershed monitoring plans.

The letter also lists the following concerns: 1) the documents improperly require TID to monitor the discharges of others, even though TID merely conveys waters of the State into which others discharge; 2) the documents abdicate Board authority to impose reasonable regulation on dischargers and shifts this duty to TID, which is not equipped for the task; 3) implementation of the MRP for Water Districts would constitute a taking of TID’s property rights without just compensation; 4) the MRP for Water Districts violates TID’s equal protection rights under the California Constitution (Article I, Section 7) and the Fourteenth Amendment of the U.S. Constitution; 5) the MRP imposes an unfunded mandate on TID, for which reimbursement is due from the State pursuant to California Constitution (Article XIII B, Section 7); 6) the MRP for Water Districts has unintended negative environmental consequences that should be addressed in an EIR under CEQA; and 7) TID incorporates previous comments by reference to the effect that the Board has not properly established beneficial uses and water quality objectives for TID’s conveyance facilities.

The letter attaches a 5 August 2005 letter from the U.S. EPA regarding “Agency Interpretation on Applicability of Section 402 of the Clean Water Act to Water Transfers.”

These comments are addressed in responses 1, 5, 6, and 7.

Baykeeper and its Deltakeeper Chapter and the California Coastkeeper Alliance (Deltakeeper) – 4 November 2005

Deltakeeper believes the proposed changes to the 2003 Conditional Waivers are wholly inadequate to address the deficiencies of the existing waiver program, the evasive efforts of the Coalition Groups, and the levels of pollution being discharged by agriculture throughout the region. Deltakeeper previously proposed incremental improvements to the initial waivers (the letter lists five), which the Board opted not to include. Based on comments at the 20 October 2005 Board meeting, it is clear that the 2003 Conditional Waivers' conditions are not protecting the Central Valley's water quality. Deltakeeper proposes the Board accept the following proposed Program changes: 1) direct enrollment by Coalition Group members within two months of approving any renewed waiver; 2) Farm Water Quality Management Plans from farmers; 3) additional monitoring locations as well as statistically significant edge-of-field monitoring; and 4) tentative Table 1 in Attachment A. However, Deltakeeper suggests the Coalition Group waiver expire 31 December 2008 and the Individual Discharger waiver expire on 31 December 2010, instead of the other way around.

Deltakeeper states that adopting a waiver program that fails to assure protection of water quality in the region fails to comply with CEQA and that the new waiver should not be approved on the basis of the existing negative declaration. The Board falls short of demonstrating that the proposed waiver is in the public interest. The proposed waivers are not consistent with the Basin Plan's Pesticide Action Plan and ignores the plain language of the State's high quality waters policy.

The letter lists the following as specific comments on the renewal documents: 1) individual enrollment is essential to the Board's oversight of Coalition Groups, but should happen before two years after the start of the waiver; 2) Farm Water Quality Management Plans must be more substantive and accessible; 3) the MRP should be expanded to include additional monitoring sites representative of edge-of-field monitoring with a clear deadline for full implementation; 4) adopt Tentative Table 1 in Attachment A; 5) expiration of the Coalition Group waiver should correspond with the current schedule for EIR completion; 6) the MRP Plans, Management Plans, and Wet and Irrigation Seasons Monitoring Reports should all be subject to public notice and comment; and 7) the Central Valley Water Board should consider proposed WDRs as an alternative to the waivers.

Attached to the letter was the Deltakeeper powerpoint presentation from the 23 June 2005 joint Board meeting, comment letter dated 7 July 2003, comment letter dated 3 July 2003, comment letter dated 23 May 2003, comment letter dated 20 May 2003, and comment letter dated 21 November 2002 as comments the Board should consider for the renewal documents.

These comments are addressed in responses 1, 2, 3, 4, 5, and 7. Although the responses do not include the proposed recommendations by Deltakeeper, staff believes the changes will adequately address the concerns and allow more time for Deltakeeper to provide specific comments on the MRPs and the table previously in Attachment A.

California Farm Bureau Federation (Farm Bureau) – 4 November 2005 (complete copy of comments and attachments were received after deadline for submittal)

The Farm Bureau believes the Central Valley Water Board should focus on being a catalyst, coordinating various ongoing efforts, and utilizing its enforcement authority and disseminating information as

necessary to achieve water quality goals. The letter includes the following question directed to the Board members, “Is it the desire of the RWQCB to have all (or a majority) of those farmers who discharge to waters of the state participate in a Coalition Group?” If the answer is yes, which is consistent with previous statements by both the Regional and State Water Boards, then this should be clear in the documents and in how the Program is implemented.

The waivers need to first quantify the problem. Monitoring has helped show that existing water quality problems are limited in time and duration, and are highly variable in location depending on a number of factors. Nature of impacts could be less if the monitoring results were evaluated against beneficial uses and water quality objectives appropriate for the respective water bodies. The proposed revisions are punitive, as they would rescind the existing waiver, are unnecessarily more restrictive, and impose additional ministerial tasks. It is unclear why the interim program proposed is so disproportionate to the actual problem.

The Farm Bureau recommends that the Board focus on developing and implementing management practice information, evaluating and establishing appropriate beneficial uses, identifying and curtailing those specific actions that are most detrimental to water quality, and establishing the cooperative process envisioned. Implementing management practices will have substantial benefits over time. “End of pipe” solutions in “end of pipe” time frames are unworkable.

The Farm Bureau letter included the following four attachments: 1) *California Farm Bureau Federation’s Comments, Attachment 1, Letter Dated November 4, 2005 to Robert H. Schneider* (Attachment 1); 2) Central Coast and Los Angeles Regional Water Quality Control Board’s *Cost Analyses for Conditional Waiver for Discharges from Irrigated Lands*; 3) *Revised Projected Costs of Waiver Program to Small, Medium and Large Farming Operations* dated 8 July 2004; and 4) *A Review of the Administrative Record for the Central Valley’s Water Quality Control Plan 1975 – 1994* dated September 2003.

In Attachment 1, the Farm Bureau recommends the Board not rescind or replace the 2003 Conditional Waivers with the proposed renewal documents. The proposed requirement for individual enrollment is disproportionate to the actual problem. Individual enrollment will not work because there is confusion about the applicability of the 2003 Conditional Waivers, and there currently is no infrastructure to manage direct signups. The Board needs to 1) inform farmers and ranchers clearly, concisely, and consistently about the Program’s requirements and who is required to participate and 2) remove the requirement to create and maintain a new bureaucracy (the database to manage the signups) or do a cost analysis for the direct enrollment with disclosure of cost analysis for public consideration.

The Farm Bureau also recommends removing the Farm Water Quality Plan requirement or do a cost analysis for the requirement for public consideration because it is an inefficient and unnecessary use of resources for an interim program, and it is unclear whether there is sufficient infrastructure in place to make complying practical. Staff justification of comparison to other Regions’ Irrigated Lands Programs is misguided because those Regions have about 10 percent of the number of participants that Region 5 has combined, those Regions already have the infrastructure in place for the requirement, and the Central Coast Region requirement is not absolute.

The letter says the conditions in both the Coalition Group and Individual Discharger Orders regarding the clarification of what irrigated lands are applicable for coverage under the Program is problematic because it de-regulates lands that were otherwise eligible for the 2003 Conditional Waivers, applies to an unquantified number of parcels with an unmeasured effect, and leaves the misconception that these lands are not required to comply with the Water Code.

The letter states that the waiver renewal documents should include a cost analysis of complying with its regulatory requirements. Regions 3 and 4 included an economic analysis. The proposed changes to the MRPs are misguided and should be removed in their entirety and discussed in the Technical Issues Committee. The letter states that the Long Term Monitoring Strategy is inappropriate and cites the Water Code, which says the Water Board has the authority to waive monitoring requirements.

The Farm Bureau recommends including Resolution No. R5-2005-0107 in the waiver renewal to provide clarity to the regulated community of their fundamental privacy rights. The letter also includes the recommendation to remove Table 1 in its entirety from Attachment A because it is unclear and problematic, applies limits to all water bodies, does not define the beneficial uses the limits are set to protect, and requires absolute compliance with the limits, which is an abuse of discretion. The Proposed Orders cannot require compliance with receiving water limitations without first properly evaluating the specific beneficial uses and promulgating their applicable water quality objectives.

Response: The Central Valley Water Board is providing a mechanism, the waivers, for farmers who discharge waste to waters of the State to comply with the Water Code. The Board and staff do not have a preference for how the farmers comply, only the desire for the farmers that discharge or threaten to discharge waste to comply with Water Code. Staff does not agree with the Farm Bureau's general assessment of water quality in the Central Valley Region. There are insufficient data to determine the duration and variability of effects on water quality, which is why staff proposed changes to the MRPs. Not only is additional sampling over time needed, but concurrent chemical and toxicity sampling is needed to effectively evaluate effects on water quality. However, staff is not proposing to include the MRPs in the renewal package to allow more time for technical discussions. The Proposed Orders do include the conditions adopted by the Resolution No. R5-2005-0107. The other comments provided in the letter are addressed in responses 1, 2, 3, 4, 5, and 7.

California Rice Commission (Rice Commission) – 4 November 2005

The Rice Commission letter discusses their group and states that several years of monitoring results are needed to identify, analyze, evaluate, and correct any negative water quality trends. The Rice Commission recommends a five-year extension of the current program. Based on staff proposing to revise the MRPs at a later date, it doesn't seem possible to only update the 2003 Conditional Waivers. The monitoring results so far show some transient problems, but no persistent toxicity. If staff wants the monitoring to be baseline, the best means to do this is to be consistent with the current program. Staff is proposing a shift of the current program to real time monitoring with immediate results. However, patience and persistence with an extension of the current program will allow us to collectively achieve the goal of identifying trends and applying corrective measures.

These comments are addressed in responses 1, 5, and 7.

California Sportfishing Protection Alliance – 4 November 2005

Discharges from irrigated lands have been identified as the largest source of pollution to Central Valley waterways. There is no right to pollute, it is a regulated privilege. The Board cannot point to a single pollution source, management measure implemented, pound of pollution that has been reduced, or enforcement action taken as a result of the 2003 Conditional Waivers. The proposed renewal documents do not propose anything for staff to identify any of these. The lack of goals, performance standards, and milestones guarantees that degradation of rivers and streams will continue. The proposed waivers essentially institutionalize the Board's abdication of its statutory responsibility to protect public trust resources by continuing to coddle agriculture and turning its back on the victims of agricultural pollution.

The Board needs to scrap this failed experiment and have agriculture adjust and prosper in compliance with the law. The Board needs to insert the proposed individual waiver requirements into general Waste Discharge Requirements, which requires no greater use of staff resources, yet would provide sufficient revenue for administration, education, and monitoring. It would ensure farmer accountability, preserve the Board's enforcement options, and provide structure necessary to secure quantifiable reductions in pollutant loading.

The letter included the Deltakeeper powerpoint presented at the 23 June 2005 joint Board meeting and remarks represented at the 20 October 2005 Board meeting.

These comments are addressed in responses 1 and 7.

Central Valley Clean Water Association (Clean Water Association) – 4 November 2005

The Clean Water Association is concerned about tentative Table 1 in Attachment A representing an inappropriate interpretation of narrative water quality objectives, which will result in new water quality objectives that have not been adopted in accordance with law and lists six factors the Board should consider in accordance with Water Code Section 13241. The letter continues with further discussion of Water Code Sections 13241 and 13269 and how these pertain to the narrative water quality objectives and consistency with water quality control plans. The letter also cites the Policy of Application of Water Quality Objectives from the Basin Plans and states there is no explanation provided for the basis of using the values and that one limit is based merely on the PQL. These water quality objectives have not been adopted in accordance with the Water Code or the Basin Plans and therefore cannot be sustained. The Clean Water Association objects to this approach.

These comments are addressed in response 4.

Department of Food and Agriculture (DFA) – 4 November 2005

DFA is encouraged by the discussion during the 31 October meeting between Board staff and the Coalition Group representatives. The most expeditious and least burdensome way for all parties to achieve water quality goals is for a partnership between the Regional Board and the Coalition Groups. For that partnership to be successful, Board staff needs to be sensitive to the concerns of the Coalition Groups and extend as much flexibility allowed under the law. Regulation of agriculture presents a unique challenge because the impairments of water quality occur primarily through non-point sources. There is the "rural culture" that has an important distinction. At times, there have been communication breakdowns.

DFA suggests a waiver extension instead of renewal to maintain stability and consistency and because the 2003 Conditional Waivers have been tested in court. The Central Valley Water Board needs to clarify the model from which it is operating to develop the waiver renewal (the letter cites Resolution No. 88-63). Resolution No. 88-63 provides exemptions for “surface waters.” Therefore, Finding No. 22 needs to be revised accordingly regarding the potential beneficial uses. DFA suggests the non-point source approach as the model to use for how contaminants move to surface waters and based on this, it does not make sense to chase contaminant plumes further upstream. Upstream monitoring should be conducted only as needed to further elucidate contaminant conditions to develop a correction plan.

DFA endorses the decision to not modify the MRPs at this time. Changes to the MRPs should be vetted and worked through the TIC. However, DFA has concerns with provisions for flow monitoring and load assessment because meaningful data are expensive to collect. DFA also welcomes the change of eliminating numeric values, which are interpreted values of narrative objectives. The Board needs to be mindful of Water Code Section 13241 when setting water quality objectives.

The Orders and Waivers refer to the Basin Plans and Resolution No. 88-63, so no revisions are necessary. The remaining comments are addressed in responses 1, 4, 5, and 7.

Department of Pesticide Regulation (DPR) – 4 November 2005

DPR’s comments are specific to tentative Table 1 in Attachment A. DPR discusses the 1-to-10 multiplier referenced in the table that is found in the Implementation Plan Chapter of the Sacramento/San Joaquin River Basin Plan. The Basin Plan text states staff “will consider,” which allows staff flexibility in determining the appropriate use. DPR states that the 1/10th of LC50 data is not appropriate for all pesticides and gives the examples of diazinon and chlorpyrifos.

DPR cannot foresee how it can best participate in efforts to improve water quality when there are apparent inconsistencies in the water quality goals. Again using diazinon and chlorpyrifos as examples, DPR states that it is unclear whether the numbers are receiving water limitations or merely triggers for an exceedance report. The objectives for diazinon and chlorpyrifos are for specific water bodies and have set compliance dates. Additionally, the Basin Plan does not state what numeric objectives apply in tributaries.

These comments are addressed in response 4.

Kern County Water Agency (Water Agency) – 4 November 2005 (comments received after deadline for submittal)

The Water Agency requests the Central Valley Water Board reject the Tentative Renewal Documents and proposes to work with staff to develop a renewal proposal “that makes sense and protects surface water quality, using the existing waiver program as a foundation.” The Water Agency is a member of the So. San Joaquin Coalition and incorporates their comments provided in the 28 October letter by reference. Due to the short time frame to review the Tentative Renewal Documents, the Water Agency provides the following three overarching comments covering three specific areas: 1) proposed expansion of the surface water quality monitoring program beyond monitoring of discharges; 2) proposed changes to the monitoring program; and 3) proposed changes in the definition of a discharger.

The Tentative Renewal Documents include characteristics that suggest it will replace the Surface Water Ambient Monitoring Program (SWAMP) and provides excerpts from the State Water Board's website about SWAMP. With reference to the MRP, the letter states that it is clear that the requirements in the Tentative Renewal Documents bear more than just passing similarities to SWAMP. This is too large of an expansion of the program. The letter continues with additional comments regarding the proposed changes to the MRP.

Coalition Groups have asked for a more practical definition of "discharger." The new definition provided by staff introduces new concerns by purporting to apply to lands which receive discharges or threaten to discharge. It is inappropriate to suggest regulating those owners or operators who are not, in fact discharging.

Staff is not proposing to include the MRPs in the renewal package. Comments on the MRP will be addressed during the MRP revision process. The definition of "discharger" included in the Proposed Orders is based on the Water Code. The comments incorporated by reference are addressed in responses 1, 2, 3, 4, 5, and 7.

G. Fred Lee and Anne Jones-Lee – 4 November 2005

The comment letter provided by Dr. G. Fred Lee and Dr. Anne Jones-Lee provides comments specific to monitoring program, including concerns about the parameters required to be tested and the adequacy of nutrient monitoring. The letter states that problems with the monitoring program will preclude developing adequate, reliable data to properly characterize the effects on water quality of irrigated agricultural runoff.

Staff is not proposing to include the MRPs in the renewal package. Comments on the MRP will be addressed during the MRP revision process.

Merced Irrigation District – 4 November 2005

This letter has several comments regarding the MRP for Water Districts.

Staff is not proposing to include the MRPs in the renewal package. Comments on the MRP will be addressed during the MRP revision process.

San Joaquin County and Delta Water Quality Coalition (Delta Coalition) – 4 November 2005

The letter states that terminating the existing waiver for the proposed waiver is unnecessary and that the proposed waiver does not include minor tweaks as staff characterized them. The Central Valley Water Board or Executive Officer can make any changes to the existing waiver after proper public review and discussion. The Delta Coalition does not agree that direct enrollment is necessary because it is a costly duplicated effort and the Coalition Groups are providing a list of members. The letter references the 31 October meeting with staff stating that staff may recommend changes to the direct enrollment and Farm Water Quality Plan requirements. The Delta Coalition agrees with the watershed approach and knows the members would appreciate not having to go to Sacramento to re-sign up for the Program. The Delta Coalition also agrees with removing the MRP from the renewal package. A consultant for the Delta Coalition could not provide comments on tentative Table 1 of Attachment A "because of the time needed to obtain copies of some obscure literature needed." The Delta Coalition supports a five-year extension of the existing Program.

These comments are addressed in responses 1, 2, 3, 4, 5, and 7.

San Joaquin Valley Drainage Authority – 4 November 2005

The letter starts with a description and discussion of the Coalition Group, which is referred to as the Westside San Joaquin Watershed Coalition (Westside Coalition). Many of the changes proposed in the renewal documents were rejected in the 2003 Conditional Waivers. These changes threaten to derail the program and show that it is futile for the Coalition Groups to try to do the right thing. The Westside Coalition summarizes five key areas of the renewal documents. The first issue is that individual enrollment remains controversial with the growers within the Westside Coalition, and the 2003 Conditional Waiver provides the Board with participant identification. The Board needs to keep the emphasis on the watershed approach. Furthermore, the change in terms appears to dictate that the Westside Coalition must organize differently. The second issue is the accountability model. The Westside Coalition argues that the 2003 Conditional Waivers allow for accountability. The third issue is that the Westside Coalition strongly objects to tentative Table 1 in Attachment A that lists receiving water limitations because they are not included in the Basin Plans or other regulations. The fourth issue is the MRP resolution. The Westside Coalition believes the proposed changes to the MRP along with tentative Table 1 in Attachment A will require endless resampling. The last issue included in the letter is the requirement for Farm Water Quality Plans to be maintained on-site. These plans are inefficient and ineffective. The Westside Coalition recommends that the Coalition Groups should be allowed to develop flexible Regional Water Quality Management Plans where the Coalition Groups can work directly with the growers.

The Westside Coalition concludes the letter recommending that the Coalition Groups continue to work under the 2003 Conditional Waivers.

These comments are addressed in responses 1, 2, 3, 4, 5, and 7.

South San Joaquin Irrigation District (District) – 4 November 2005 (comments received after deadline for submittal)

The District's main objection to the Tentative Renewal Documents is that it imposes more frequent monitoring and more detailed reporting than the 2003 Conditional Waivers and than is justified or reasonable. The letter states that the District is not conceding that the Water Board may regulate it for the discharges incidental to irrigation or that it is required to allow under the Water Code. The letter states that the definition of "Discharger" should be consistent in both the Order and Attachment A. If water districts are included in the definition of "Discharger," then the Order should include the basis for regulating water districts.

The definition of an "exceedance" in Attachment B is not justified because there are PQLs higher than the receiving water limitations and most labs cannot meet the PQLs listed or if they can, they have to modify the method. The requirement for dischargers to improve water quality is vague because improving water quality is not the responsibility of the discharger which receives source water through a water system. The letter includes nine comments on the MRP for Water Districts.

The letter states that the Technical Issues Committee should be afforded the opportunity to apply good science to the conditional waivers. Monitoring by Water Districts shows that the system is not a

significant factor of waste discharges from irrigated lands. The District recommends the Water Board follow the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, not Drinking Water Standards, recognize and give appropriate weight to Porter-Cologne, California Water Plan guidelines Nos. 13141 and 13225, and use the TIC to investigate technical issues.

These comments are addressed in responses 1, 4, 5, 6, and 7.

Turlock Irrigation District (TID) – 4 November 2005

TID cites text in the renewal documents about why water districts are potentially dischargers under the waiver and points out that the water accepted by the water districts should already be covered under the waiver and that as stated in Water Code Section 13260, “any person discharging waste” is responsible for that discharge. The Coalition Groups collect a fee for the monitoring of these discharges, not the water districts, and although not all growers are members of a Coalition Group, the water districts should not have to take the responsibility for sampling for these non-members. Therefore, the sampling by water districts is duplicative and unwarranted. If local canals and/or drains need to be monitored, then the Coalition Groups should monitor them regardless of whether the water district is a member of the Coalition Group or not. The sampling by the water districts should be designed to supplement the Coalition Group monitoring with more specific monitoring related to water district practices that may result in potential discharges of waste. Merely transporting water within a canal or drain is not a discharge of waste. This comment is addressed again later in the letter with a reference to Water Code Section 13267(b)(1).

The San Joaquin River Group Authority, represented by five districts, has been awarded funding under Proposition 13, which shows the proactive approach that the districts have taken to manage additional monitoring requirements. However, the grant’s monitoring program was developed before the monitoring requirements were known under the proposed waiver, so they may not meet the needs of the waiver, but will provide valuable data to help characterize water quality within the region.

The letter states that Water Code Section 13269(a)(3) gives the Board discretion to waive the monitoring requirements for chemicals that the water districts do not use. The monitoring by the Coalition Groups should be sufficient. TID also has concerns about the requirement for water districts to know the management practices of all the growers and that the language in the waiver should indicate that water districts are not responsible for the water quality of discharges from others into conveyance facilities and are not required to “implement and evaluate” the management practices of others.

In tentative Table 1 of Attachment A, staff references the Pesticide Action Network for the lowest number of 1/10th of the LC50, but staff should not use this database because it is known to have QA/QC issues. Staff should use available reputable published information or references. It is not clear which sensitive species were used and if those species are present or expected within the site-specific receiving waters of concern. Many of the numbers provided are below PQLs. Furthermore, some of the limits included in the table are lower than the Water Quality Guidelines that are used to identify impaired waters for the 303(d) list. TID states that the limit for total dissolved solids appears to be an error. It is recommended that staff remove tentative Table 1 from Attachment A until more work is done on this issue because the receiving water limitations are an important part of the process. TID points out that it is unclear if laboratories can meet the limits listed in tentative Table 1 of Attachment A.

The letter states the majority of water within the TID canal system during the irrigation season are comprised of freshwater flows from the Tuolumne River, and although some agricultural discharges do occur, there are also urban inflows into these systems that are not agricultural discharges, with the same being true during the non-irrigation season with stormwater flows. Based on this and the waiver's determination of responsibility for discharges, are the water districts out of compliance due to the urban discharges?

Language in Condition 6 of Attachment B assumes that the discharges are affecting water quality, which in some cases may be a result of background or upstream sources, in which case the growers should not have to implement management practices. Language in Conditions 7 and 11 prohibits the growers from changing crops or farming practices.

TID also provided comments on the MRP.

These comments are addressed in responses 1, 4, 5, 6, and 7. Staff has removed the MRPs from the renewal documents. All comments on the MRP will be addressed during the MRP revision process.

Western Plant Health Association – (Western Plant) – 4 November 2005

Western Plant is concerned about tentative Table 1 in Attachment A because the receiving water limitations are not legally required, many of the limits are unadopted water quality objectives, and staff interpretations of narrative water quality objectives are not consistent with the Basin Plan. The letter provides further detail in support of the three issues regarding tentative Table 1.

These comments are addressed in response 4.

Association of California Water Agencies (ACWA) – 5 November 2005

ACWA supports the renewal of the 2003 Conditional Waivers and continuation of the program for a five-year period, recognizing the intention that long-term program alternatives will be developed and evaluated over coming years and that the changes made are for technical and administrative improvements. However, ACWA does not support wholesale revisions at this time and is disappointed with the significant and dubious proposed changes. Specifically, ACWA opposes 1) inclusion of Attachment A specifying numeric receiving water limitations, 2) direct enrollment requirement, 3) Farm Water Quality Plan requirement, 4) the Long-Term Monitoring Strategy requirement, and 5) mandatory electronic data submittals. ACWA does not support these changes because it undermines an already struggling program and further alienates the agricultural community. The letter recommends that the Board “stay the course and reach out to the regulated community to make the existing program work better, while at the same time laying the groundwork for a more robust and sustainable stewardship-based water quality program for the long-term.”

These comments are addressed in responses 1, 2, 3, 4, 5, and 7.